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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY [signature] DEPUTY

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. Martin AYALA-Benitez, Defendant.	Magistrate Case No. 08MJ8339 FINDINGS OF FACT AND ORDER OF DETENTION

In accordance with § 3142(f) of the Bail Reform Act of 1984 (18 U.S.C. § 3141 et seq.), a detention hearing was held on April 22, 2008, to determine whether defendant Martin AYALA-Benitez, should be held in custody pending trial on the grounds that he is a danger to the community. Assistant U. S. Attorney Karla K. Davis, appeared on behalf of the United States; Diane Regan, of Federal Defenders of San Diego, Inc., appeared on behalf of the Defendant.

Based on the evidence proffered by the United States and the Defendant, the pretrial services officer, and the criminal complaint issued against the Defendant on April 22, 2008, by this Court, the Court concludes that the following facts establish by clear and convincing evidence that no condition or combination of conditions will reasonably assure the safety of another person and the community.

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I

FINDINGS OF FACT

A. Nature and Circumstances of the Offense Charged (18 U.S.C. §3142(G)(1)

1. The Defendant is charged in Criminal Complaint No. 08MJ8339 with Deported Alien Found in the United States, in violation of Title 8, United States Code, § 1326. Therefore probable cause exists to believe the Defendant committed the charged offense.

2. According to the United States Sentencing Guidelines, the Base Offense Level is 24. The Defendant's criminal history score places him in Criminal History Category I. As a result, the sentencing range for the Defendant is 51 to 63 months in prison.

3. The Defendant has been convicted of a State offense that is an offense described in 18 U.S.C. § 3142, subsection (f)(1)(A). Thus, there arises a presumption that no condition or combination of conditions will reasonably assure the safety of another person and the community. See 18 U.S.C. § 3142 (e).

B. Weight of the Evidence Against the Defendant (18 U.S.C. § 3142(g)(2)

1. On April 20, 2008, U.S. Border Patrol Agent Perez encountered Defendant in a group of nine near Ocotillo, California. Records check revealed that Defendant had been previously deported by an Immigration Judge on August 6, 1987. Defendant admitted he did not have any documentation to be legally in the United States nor has he ever sought permission to re-enter the United States from the Attorney General.

C. History and Characteristics of the Defendant (18 U.S.C. § 3142(G)(3)

1. The Defendant is a Citizen of Mexico.

2. The Defendant resides in Guerrero, Mexico.

3. The Defendant has no immigration status to live in the United States. Furthermore the Defendant was deported from the United States on August 6, 1987.

D. Nature and Seriousness of Danger Posed by Release (18 U.S.C. § 3142(g)(4)

1. The Defendant's conviction involving a sex crime perpetrated on a minor weigh in finding that the Defendant poses a danger to the community. The Defendant has the following criminal history:

05/28/85 - Sexual Assault
Aggravated Sexual Assault on Child - 2 Counts

Sex Offense Against Child - Fondling
Indecency with Child - 2 Counts

- 3 years confinement, each count concurrent

II

REASONS FOR DETENTION

A. There is probable cause to believe that the Defendant committed the offense charged in Criminal Complaint No. 08MJ8339, namely, Deported Alien Found in the United States (Felony), in violation of Title 8, United States Code, 1326.

B. The Defendant faces a substantial period of time in custody if convicted of the offense charged in the Complaint. He therefore has a strong motive to flee. Furthermore, the Defendant is a Mexican Citizen and has no legal right to live or work in the United States. Therefore, this Court views the Defendant as a danger to the community.

C. The Defendant has not rebutted the presumption, based upon the Court's findings that there is probable cause to believe that the Defendant committed offenses as described in 18 U.S.C. § 3142(e)(1) and 18 U.S.C. § 3142(f)(1)(A), crimes of violence, that no condition or combination of conditions will reasonably assure the safety of the community. See 18 U.S.C. § 3142(e).

III

ORDER

IT IS HEREBY ORDERED that the Defendant be detained pending trial in this matter.

IT IS FURTHER ORDERED that the Defendant be committed to the custody of the Attorney General or his designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. The Defendant shall be afforded reasonable opportunity for private consultation with counsel.

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While in custody, upon order of a court of the United States or upon the request of an attorney for the United States, the person in charge of the correctional facility shall deliver the Defendant to the United States Marshal for the purpose of an appearance in connection with a court proceeding or any other appearance stipulated to by defense and government counsel.

THIS ORDER IS ENTERED WITHOUT PREJUDICE.

IT IS SO ORDERED.

DATED: 4-25-08.

PETER C. LEWIS
UNITED STATES MAGISTRATE JUDGE

Prepared by:

KAREN P. HEWITT
United States Attorney

KARLA K. DAVIS
Assistant U. S. Attorney

cc: Casey Donovan
Counsel for Defendant